

**EXHIBIT 'I'**

**GENERAL CONDITIONS**

**DESIGN BUILD CONTRACT  
BETWEEN  
CITY OF SANTEE  
AND  
[DESIGN BUILD ENTITY]**

<b>ARTICLE 1:</b>	<b>GENERAL PROVISIONS.....</b>	<b>1</b>
1.1	BASIC DEFINITIONS .....	1
1.2	OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS .....	5
1.3	INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE .....	5
<b>ARTICLE 2:</b>	<b>CITY'S RIGHTS AND RESPONSIBILITIES .....</b>	<b>7</b>
2.1	FEE AND PERMIT REQUIREMENTS.....	7
2.2	ACCESS TO PROJECT SITE .....	7
2.3	THE CITY'S RIGHT TO STOP WORK ON THE PROJECT .....	7
2.4	THE CITY'S RIGHT TO CARRY OUT WORK ON THE PROJECT .....	7
2.5	THE CITY'S RIGHT TO REPLACE THE CITY'S REPRESENTATIVE.....	7
2.6	PARTIAL OCCUPANCY OR USE .....	8
2.7	INFORMATION PROVIDED BY CITY .....	8
<b>ARTICLE 3:</b>	<b>DESIGN BUILD ENTITY'S RIGHTS AND RESPONSIBILITIES .....</b>	<b>9</b>
3.1	DESIGN BUILD ENTITY'S RESPONSIBILITY; INDEPENDENT CONTRACTOR .....	9
3.2	REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS; SINGLE POINT RESPONSIBILITY OF THE DESIGN BUILD ENTITY .....	9
3.3	DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES .....	10
3.4	LABOR AND MATERIALS.....	11
3.5	DESIGN BUILD ENTITY'S WARRANTY .....	11
3.6	TAXES .....	12
3.7	PERMITS, FEES, AND NOTICES .....	12
3.8	APPLICABLE CODE REQUIREMENTS.....	12
3.9	SUPERINTENDENT .....	13

3.10	PROJECT STAFFING .....	13
3.11	TOXIC MATERIALS.....	14
3.12	HAZARDOUS MATERIALS .....	14
3.13	COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION .....	15
3.14	CONSTRUCTION DOCUMENTS .....	15
3.15	MONTHLY REPORT .....	17
3.16	OTHER REPORTS .....	17
3.17	NOTICES OF LABOR DISPUTE .....	17
3.18	GUARANTEE .....	18
3.19	WARRANTY .....	19
3.20	SCHEDULES REQUIRED OF THE DESIGN BUILD ENTITY .....	19
3.21	AS BUILT DOCUMENTS.....	20
3.22	DOCUMENTS AND SAMPLES AT PROJECT SITE .....	21
3.23	SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES .....	21
3.24	USE OF SITE AND CLEAN UP .....	22
3.25	CUTTING, FITTING, AND PATCHING .....	23
3.26	ACCESS TO WORK.....	23
3.27	ROYALTIES AND PATENTS.....	23
3.28	CONCEALED OR UNKNOWN CONDITIONS.....	24
3.29	LIABILITY FOR AND REPAIR OF DAMAGED WORK.....	24
3.30	INDEMNIFICATION.....	25
<b>ARTICLE 4:</b>	<b>ADMINISTRATION OF THE CONTRACT .....</b>	<b>26</b>
4.1	ADMINISTRATION OF THE CONTRACT BY THE CITY'S REPRESENTATIVE.....	26
4.2	THE DESIGN BUILD ENTITY CHANGE ORDER REQUESTS.....	27
4.3	CLAIMS .....	29
4.4	ASSERTION OF CLAIMS.....	30
4.5	DECISION OF THE CITY'S REPRESENTATIVE ON CLAIMS .....	31
4.6	ALTERNATE DISPUTE RESOLUTION OF CLAIMS.....	31
4.7	MEDIATION PROCEDURES.....	32
4.8	NO WAIVER .....	32
<b>ARTICLE 5:</b>	<b>SUBCONTRACTORS.....</b>	<b>32</b>

5.1	AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.....	32
5.2	SUBCONTRACTOR RELATIONS.....	33
<b>ARTICLE 6:</b>	<b>CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS.....</b>	<b>34</b>
6.1	THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS .....	34
6.2	MUTUAL RESPONSIBILITY.....	34
<b>ARTICLE 7:</b>	<b>CHANGES IN THE SCOPE OF WORK.....</b>	<b>35</b>
7.1	CHANGES.....	35
7.2	DEFINITIONS.....	35
7.3	CHANGE ORDER PROCEDURES .....	36
7.4	FIELD ORDERS .....	39
7.5	VARIATION IN QUANTITY OF UNIT PRICE WORK .....	40
7.6	NO WAIVER .....	40
<b>ARTICLE 8:</b>	<b>CONTRACT TIME.....</b>	<b>40</b>
8.1	COMMENCEMENT OF WORK ON THE PROJECT .....	40
8.2	PROGRESS AND COMPLETION .....	40
8.3	DELAY .....	41
8.4	ADJUSTMENT OF THE CONTRACT TIME FOR EXCUSABLE DELAY.....	41
8.5	COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY.....	43
8.6	NO WAIVER .....	44
<b>ARTICLE 9:</b>	<b>PAYMENTS AND COMPLETION.....</b>	<b>44</b>
9.1	COST BREAKDOWN/SCHEDULE OF VALUES.....	44
9.2	PROGRESS PAYMENT .....	45
9.3	APPLICATION FOR PAYMENT .....	45
9.4	APPROVAL OF CERTIFICATE FOR PAYMENT BY CITY .....	46
9.5	DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW .....	48
9.6	[RESERVED.].....	46
9.7	[RESERVED.].....	46
9.8	FINAL COMPLETION AND FINAL PAYMENT .....	49

<b>ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY .....</b>	<b>50</b>
10.1 SAFETY PRECAUTIONS AND PROGRAMS.....	50
10.2 SAFETY OF PERSONS AND PROPERTY .....	50
10.3 EMERGENCIES .....	50
<b>ARTICLE 11: INSURANCE AND BONDS .....</b>	<b>51</b>
11.1 THE DESIGN BUILD ENTITY’S INSURANCE .....	51
<b>ARTICLE 12: UNCOVERING AND CORRECTION OF CONSTRUCTION               WORK.....</b>	<b>53</b>
12.1 UNCOVERING OF WORK ON THE PROJECT .....	53
12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD.....	54
<b>ARTICLE 13: TERMINATION OR SUSPENSION OF THE CONTRACT.....</b>	<b>54</b>
13.1 TERMINATION BY THE CITY FOR CAUSE .....	54
13.2 SUSPENSION BY THE CITY FOR CONVENIENCE .....	56
13.3 TERMINATION BY THE CITY FOR CONVENIENCE .....	57
<b>ARTICLE 14: STATUTORY REQUIREMENTS.....</b>	<b>58</b>
14.1 NONDISCRIMINATION .....	58
14.2 HOURS OF WORK.....	58
14.3 WAGE RATES, TRAVEL, AND SUBSISTENCE .....	60
14.4 APPRENTICES .....	62
14.5 THIRD-PARTY CLAIMS (Pub. Contract Code § 9201.).....	52
14.6 ANTI-TRUST CLAIM ASSIGNMENT (Pub. Contract Code §7103.5).) .....	62
14.7 STORMWATER POLLUTION PREVENTION PLAN .....	62
<b>ARTICLE 15: MISCELLANEOUS PROVISIONS .....</b>	<b>64</b>
15.1 GOVERNING LAW .....	64
15.2 SUCCESSORS AND ASSIGNS .....	64
15.3 RIGHTS AND REMEDIES .....	64
15.4 SURVIVAL .....	65
15.5 COMPLETE CONTRACT .....	65
15.6 SEVERABILITY OF PROVISIONS .....	65
15.7 THE CITY’S RIGHT TO AUDIT .....	65
15.8 NOTICES.....	65

15.9	TIME OF THE ESSENCE .....	65
15.10	STATUTORY LIMITATION .....	66
15.11	CORRECTION OF ERRORS AND OMISSIONS.....	66
15.12	INTERPRETATION.....	66

## **ARTICLE 1: GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

1.1.1 ACT OF GOD. The term "Act of God" shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster.

1.1.2 CEQA. The term "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq. All CEQA compliance documentation prepared for the Project shall be provided to the Design Build Entity.

1.1.3 CITY. The term "City" shall mean the City of Santee.

1.1.4 CITY'S REPRESENTATIVE. The term "The City's Representative" means the person or firm identified as the City's primary contact person as designated in the Contract.

1.1.5 CONSTRUCTION DOCUMENTS. The term "Construction Documents" shall mean the plans and specifications prepared by the Design Build Entity for the Project, approved by the City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the City in writing.

1.1.6 CONSTRUCTION DOCUMENTS PHASE. The term "Construction Documents Phase" shall mean the second of three phases of the Scope of Work and will commence with the issuance of the City's written approval of the Schematic Design Phase services.

1.1.7 CONSTRUCTION PHASE. The term "Construction Phase" shall mean the third phase of the Scope of Work and will commence upon final written approval of the plans and specifications by the City.

1.1.8 CONSTRUCTION WORK. The term "Construction Work" shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.9 CONTRACT. The term "Contract" means the written agreement between the Design Build Entity and the City set forth in the Contract Documents.

1.1.10 CONTRACT DOCUMENTS. The "Contract Documents" consist of the documents as stated in the Contract.

1.1.11 CRITERIA DOCUMENTS. The term “Criteria Documents” means, but is not limited to, the portions of the Contract Documents the City’s written outline of design requirements, Scope of Work, Project Program, Performance Specifications and schematic drawings.

1.1.12 CONTRACT PRICE. The Term “Contract Price” shall mean the lump sum price the City will pay for the completion of all work on the Project as set forth in the Contract.

1.1.13 CONTRACT TIME. The term “Contract Time” shall mean the date(s) by which the Design Build Entity agrees that all work on the Project, or specified portions of the work, shall be completed as set forth in the Contract.

1.1.14 DAY. The term “day,” shall mean calendar day, unless otherwise specifically provided.

1.1.15 DESIGN BUILD ENTITY. The term “the Design Build Entity” means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

1.1.16 DESIGN BUILD ENTITY REPRESENTATIVE. The Design Build Entity Representative shall mean the person identified as the primary contact person and representative of the Design Build Entity as designated in the Contract.

1.1.17 DESIGN MATERIALS. The term “Design Materials” shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design Build Entity: (1) to the City under the Contract Documents or; (2) developed or prepared by or for the Design Build Entity specifically to discharge its duties under the Contract Documents.

1.1.18 DESIGN PROFESSIONAL OF RECORD. The term “Design Professional of Record” means the architectural and/or engineering professional identified in the Design Build Entity’s Proposal that is properly qualified and licensed in the State of California and is part of the Design Build Entity.

1.1.19 DESIGN WORK. The term “Design Work” shall mean the portion of the work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

1.1.20 DRAWINGS. The term “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

1.1.21 EXCUSABLE DELAY. The term “Excusable Delay” means a delay that meets the requirements of Articles 7 and 8 of these General Conditions, and may entitle the Design Build Entity to an adjustment of the Contract Time and/or an adjustment to the Contract Price, as specified in Articles 7 and 8 herein.

1.1.22 FINAL COMPLETION. The term “Final Completion” means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the City’s Representative pursuant to Paragraph 9.8, Final Completion and Final Payment, of the General Conditions.

1.1.23 GOVERNMENTAL APPROVALS. Term “Governmental Approvals” means those governmental (including agency) actions required to be obtained by the City and necessary for the completion of the Project.

1.1.24 MASTER PROJECT SCHEDULE. The term “Master Project Schedule” shall mean the overall schedule for completion of Project as prepared by the City and included in the RFP.

1.1.25 NOTICE(S) TO PROCEED. The term “Notice to Proceed” shall mean the written notice(s) given by the City to the Design Build Entity advising that the Site is available to the Design Build Entity and directing the Design Build Entity to commence work on the Project. The City shall issue two separate Notices to Proceed to the Design Build Entity. The first Notice to Proceed will be issued for the Design Build Entity to proceed with the design of the Project. The City shall issue a second Notice to Proceed for the construction work on the Project upon the City’s review and approval of the Construction Documents prepared by the Design Build Entity.

1.1.26 OWNER. The term “Owner” shall mean the City.

1.1.27 PROJECT. The term “Project” means the total design and construction of which the work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by the City or by Separate Contractors.

1.1.28 PROPOSAL. The term “Proposal” means the proposal submitted by the Design Build Entity in response to the Request for Proposal for this Project.

1.1.29 REQUEST FOR PROPOSAL. The term “Request for Proposal” also referred to as the “RFP” herein, means the request for proposal issued by the City for PROJECT and includes all documents, exhibits, attachments, and addenda thereto.

1.1.30 SCHEMATIC DESIGN PHASE. The term “Schematic Design Phase” shall mean the first of three phases of the Scope of Work. The scope of the Schematic Design Phase is further defined in the RFP.

1.1.31 SCOPE OF WORK. The term “Scope of Work” shall mean all the all labor, materials, and services required to be performed or provided by the Design Build



Entity pursuant to the Contract Documents necessary to design, construct, and complete the Project.

1.1.32 SPECIFICATIONS. The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services.

1.1.33 SUBCONTRACTOR. The term "Subcontractor" means any person or firm that has a contract with the Design Build Entity or with a Subcontractor of the Design Build Entity to perform a portion of the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.34 SUPERINTENDENT. The term "Superintendent" means the person designated by the Design Build Entity to represent the Design Build Entity at the Project site, in accordance with Article 3.

1.1.35 UNEXCUSABLE DELAY. The term "Unexcusable Delay" means any delay other than an Excusable Delay, as described in Articles 7 and 8 of these General Conditions, that does not entitle the Design Build Entity to an adjustment of the Contract Price and does not entitle the Design Build Entity to an adjustment of the Contract Time.

## **1.2 OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS**

The Construction Documents, and all copies thereof, furnished to, or provided by, the Design Build Entity are the property of the City. The City and the Design Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of the City. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, including the right to reuse details of the Design on any other City work at no additional cost to the City. The Design Build Entity agrees to, and hereby does, grant to the City a royalty free license to all such data that the Design Build Entity may cover by copyright and to all designs as to which the Design Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design Build Entity, for a period up to five (5) years from the Date of Substantial Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of the City. Any use or reuse by City of the Construction Documents on any project other than this Project without employing the services of the Design Build Entity shall be at City's own risk with respect to third parties. If the City uses or reuses the Construction Documents on any project other than this Project, they shall remove the Design Build Entity's Design Professional of Record's seal from the Construction Documents and hold harmless Design Build Entity and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Construction Documents on such other project. Design Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the

Design Build Entity, a party for which the Design Build Entity is legally responsible or liable, or anyone approved by the Design Build Entity.

### **1.3 INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE**

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Project by the Design Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict or inconsistency, the following order of precedence shall apply:

- a. Change Orders/Modifications
- b. Addenda
- c. Contract
- d. Special Conditions
- e. General Conditions
- f. Construction Documents prepared by Design Build Entity and approved in writing by Owner.
- g. Revised and/or Additional Plans/Specifications Portions of Design-Build Entity Proposal in response to RFP as reviewed and approved in writing by Owner.
- h. Request for Proposal ("RFP") and all addenda
- i. All Attachments and Appendices to RFP

1.3.3 The City and the Design Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Design Build Request for Proposal package upon which the Design Build Entity based its response(s) to Request for Proposal. Prior to the commencement of construction on the Project, the Parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design Build Entity in dividing portions of the work necessary for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings;

non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.8 Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

1.3.9 Before commencing any work on the Project, the Design Build Entity shall check and review the plans and specifications and Contract Documents for conformance and compliance with all laws, ordinances, codes, rules and regulations of all Governmental Authorities and public utilities affecting the Project, all quasi-governmental and other regulations affecting the Project, and other special requirements, if any, designated in the Contract. In the event the Design Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design Build Entity shall immediately notify the City’s Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design Build Entity fails to conduct such review or notification to the City.

1.3.10 Before commencing any work on the Project, the Design Build Entity shall carefully examine all specifications, Contract Documents and other information provided to the Design Build Entity as to Project requirements. The Design Build Entity shall immediately notify the City’s Representative of any perceived or

alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. If the Design Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the Contract Time. In no case shall any Subcontractor proceed with work if uncertain without the Design Build Entity's written direction and/or approval.

## **ARTICLE 2: CITY'S RIGHTS AND RESPONSIBILITIES**

### **2.1 FEE AND PERMIT REQUIREMENTS.**

Except as otherwise provided in the Contract Documents, the Design Build Entity will identify, prepare and submit on behalf of the City the applications for any necessary permits, easements, fees and/or other government approvals for the use or occupancy of the Project. The City will pay for such permits and fees which the Design Build Entity shall be responsible for obtaining on the City's behalf, as applicable.

### **2.2 ACCESS TO PROJECT SITE**

The City will provide, as reasonably required, but in no event later than the date designated in the Notice to Proceed with Construction, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the Design Build Entity.

### **2.3 THE CITY'S RIGHT TO STOP WORK ON THE PROJECT**

If the Design Build Entity fails to correct Defective Work as required by Paragraph 12.2 or fails to perform the Work in accordance with the Contract Documents, the City or the City's Representative may direct the Design Build Entity to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated by the Design Build Entity. The Design Build Entity shall not be entitled to any adjustment of Contract Time or the Contract Price as a result of any such order. The City and the City's Representative have no duty or responsibility to the Design Build Entity or any other party to exercise the right to stop work on the Project.

### **2.4 THE CITY'S RIGHT TO CARRY OUT WORK ON THE PROJECT**

If the Design Build Entity fails to carry out the Project in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, or otherwise fails to comply with any material term of the Contract Documents, and fails within two (2) days after receipt of notice from the City to promptly commence and thereafter diligently continue to completion the correction of such failure, the City may, without prejudice to other remedies the City may have, correct such failure at the Design Build Entity's expense. In such case, the City will be entitled to deduct from

payments then or thereafter due the Design Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of the City's Representative and the City's consultants made necessary thereby. If payments then or thereafter due the Design Build Entity are not sufficient to cover such amounts, the Design Build Entity shall pay the additional amount to the City within ten (10) days of the City's written demand.

## **2.5 THE CITY'S RIGHT TO REPLACE THE CITY'S REPRESENTATIVE**

The City may at any time and from time to time, without prior notice to or approval of the Design Build Entity, replace the City's Representative with a new individual. Upon receipt of notice from the City informing the Design Build Entity of such replacement and identifying the new City's Representative, the Design Build Entity shall recognize such person or firm as the City's Representative for all purposes under the Contract Documents.

## **2.6 PARTIAL OCCUPANCY OR USE**

2.6.1 The City may occupy or use any completed or partially completed portion of the Project at any time. The City and the Design Build Entity shall agree in writing to the condition and status of the Project (or designated portion), the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the work (or designated portion), insurance, the period for correction of the work (or designated portion), and the commencement of warranties for the work (or designated portion) required by the Contract. When requested by the City, the Design Build Entity shall complete all Punch List items for the occupied portion of the Project.

2.6.2 Immediately prior to such partial occupancy or use, the City and the Design Build Entity shall jointly inspect the portions of the Project (or designated portion) to be occupied or used, in order to determine and document the condition and status of the work on the Project.

2.6.3 Unless otherwise agreed by the Parties in writing, partial occupancy or use of a portion or portions of the Project shall not constitute final acceptance of the Project, shall not be deemed an approval of any portion or portions of the Project not in compliance with the requirements of the Contract, and shall not relieve the Design Build Entity of any responsibility or obligation under the Contract.

## **2.7 INFORMATION PROVIDED BY CITY**

2.7.1 The City provided the Design Build Entity with information regarding the Site in the RFP and its respective components, including, but not limited to previous plans and other data.

2.7.2 This information is for the Design Build Entity's use in performing the Project work. Design Build Entity is responsible for verifying field conditions and

other data in the information provided by Owner and requesting written clarification of any errors or ambiguities discovered by the Design Build Entity.

### **ARTICLE 3: DESIGN BUILD ENTITY'S RIGHTS AND RESPONSIBILITIES**

#### **3.1 DESIGN BUILD ENTITY'S RESPONSIBILITY; INDEPENDENT CONTRACTOR**

The Design Build Entity shall be responsible to the City for acts and omissions of the Design Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the Design Build Entity or any of its Subcontractors. The City retains the Design Build Entity as an independent contractor. The Design Build Entity is not an employee, agent or representative of the City. The Design Build Entity represents that it is fully experienced and properly qualified as well as properly licensed, equipped, organized, and financed to perform the Project. The Design Build Entity shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

#### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS; SINGLE POINT RESPONSIBILITY OF THE DESIGN BUILD ENTITY**

3.2.1 In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 10 of the Contract, the Design Build Entity shall carefully study and compare each of the Contract Documents provided by the City with the others and with information furnished by the City, and shall promptly report in writing to the City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the City or inconsistencies with Applicable Code Requirements observed by the Design Build Entity. The Design Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to the City in writing.

3.2.2 The Design Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to public projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The Design Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design Build Entity before commencing work on the Project. Errors,

inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the City's Representative.

3.2.3 If the Design Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Subparagraphs 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the City's Representative, the Design Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

3.2.4 The City does not assume any obligation to employ the Design Build Entity's services or pay the Design Build Entity royalties of any type as to future projects that may result from work performed under this Contract.

3.2.5 The Design Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

3.2.6 The Design Build Entity agrees that it has single point responsibility for the Design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design Build Entity agrees that, in light of the high degree of confidence and trust that the City has reposed in the Design Build Entity, the Design Build Entity is a fiduciary of the City and, as such, has the duty to act in the City's best interests at all times throughout the course and performance of this Contract.

### **3.3 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES**

3.3.1 The Design Build Entity shall supervise, coordinate, and direct all work on the Project using the Design Build Entity's best skill and attention. The Design Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

3.3.2 The Design Build Entity shall be responsible to the City for acts and omissions of the Design Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

3.3.3 The Design Build Entity shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the City or the City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design Build Entity.

3.3.4 The Design Build Entity shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

3.3.5 To facilitate communications and the management of the Design process, the Design Build Entity shall establish a local office, within the City limits, for the duration of the Design process.

3.3.6 [RESERVED.]

3.3.7 The Design Build Entity is required to deliver to the City, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

3.3.8 The Design Build Entity shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the Design Build Entity in order to ensure conformance with the requirements of CEQA as required in the Contract Documents.

3.3.9 The Design Build Entity is responsible for preparation of the Construction Documents for the entire Project.

3.3.10 The Design Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

3.3.11 The Design Build Entity shall at all times maintain good discipline and order among its employees and subcontractors. The Design Build Entity shall provide competent, fully qualified personnel to perform all work on the Project.

### **3.4 LABOR AND MATERIALS**

Unless otherwise provided in the Contract Documents, the Design Build Entity shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

### **3.5 DESIGN BUILD ENTITY'S WARRANTY**

The Design Build Entity warrants to the City that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for public projects of the type, scope, quality and complexity of the Project utilizing the Design Build contracting mode. The Design Build Entity warrants to the City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects



and that all work will conform with the requirements of the Contract Documents. If required by the City's Representative, the Design Build Entity shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the City's Representative.

### **3.6 TAXES**

The Design Build Entity shall pay all sales, consumer, use, income, payroll and similar taxes in connection with the Project.

### **3.7 PERMITS, FEES, AND NOTICES**

Except for the permits and approvals which are to be obtained on behalf of the City or the requirements with respect to which the City is not subject, as provided in Subparagraph 2.1.1, the Design Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project. The Design Build Entity shall deliver to the City all original licenses, permits, and approvals obtained by the Design Build Entity in connection with work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

### **3.8 APPLICABLE CODE REQUIREMENTS**

3.8.1 The Design Build Entity shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

(a) All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the Design Build Entity, any Subcontractor, the Project, the Project site, the work on the Project, or the prosecution of the work on the Project.

(b) All requirements of any insurance company issuing insurance required hereunder.

(c) Applicable sections in the State of California Labor Code.

(d) All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.8.2 The Design Build Entity shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5, and applicable sections that follow). The Design Build Entity shall promptly notify the City's Representative in writing if the Design Build Entity becomes aware during the

performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

3.8.3 If the Design Build Entity performs work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to the City and the City's Representative, the Design Build Entity shall be responsible for such work and any resulting damages including, without limitation, the costs of correcting Defective Work.

### **3.9 SUPERINTENDENT**

3.9.1 The Design Build Entity shall employ a competent Superintendent satisfactory to the City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design Build Entity and communications given to, and received from, Superintendent shall be binding on the Design Build Entity. Failure to maintain a Superintendent on the Project site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the City to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop work order, the Design Build Entity fails to complete the Contract on time, the Design Build Entity will be assessed Liquidated Damages in accordance with the Contract.

3.9.2 Any changes to the assignment of the Superintendent shall receive prior written approval from the City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

### **3.10 PROJECT STAFFING**

3.10.1 The Design Build Entity and each Subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the work; and keep an adequate force of skilled and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

3.10.2 The City shall have the right, but not the obligation, to require the removal from the Project of the Design Build Entity's Representative, or any superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the City, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the City, uncooperative

or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

### **3.11 TOXIC MATERIALS**

The Design Build Entity is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design Build Entity based on its experience and expertise on similar projects.

### **3.12 HAZARDOUS MATERIALS**

3.12.1 The Design Build Entity is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, hazardous materials shall also include, but are not limited to, underground storage tanks. Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The City agrees that the Design Build Entity cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

3.12.2 "Hazardous materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design Build Entity or the City; or as defined in the California Health and Safety Code.

3.12.3 "Underground Storage Tank" shall have the Definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1, 100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

3.12.4 “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality’s of the City, State of California, and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

### **3.13 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

The Design Build Entity shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (“Permit”) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale as described in Article 14.10 below. Failure to comply with the Permit is in violation of federal and state law. The Design Build Entity hereby agrees to indemnify the City in accordance with Paragraph 3.30 herein of any failure or alleged failure to comply with the Permit.

### **3.14 CONSTRUCTION DOCUMENTS**

#### **3.14.1 Construction Documents**

(a) Upon receipt of the Notice to Proceed, the Design Build Entity shall instruct the Design Professional of Record to commence the design of the Project and the preparation of the Schematic Design and Construction Documents. Upon review and written approval of the Schematic Design by the City, the Design Build Entity shall complete the Construction Documents. The Design Build Entity shall address all of the City’s comments on the Schematic Design documents in the Construction Documents, either by incorporating the comments or providing a written explanation of why the comment is not incorporated. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The City’s review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3 relating to Schedule. Such review shall not relieve the Design Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the City of any deviation from, or of the Design Build Entity’s failure to comply with, any provision or

requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design Build Entity and approved by the City.

(b) However, it is acknowledged by the parties hereto that inherent in a Design Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Build Entity will limit the Construction Document packages submitted to the City for review and approval for construction to five (5), unless approved in writing by the City. Contract Schedule shall indicate the times for the City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

(c) The Design Build Entity shall submit completed packages of the Construction Documents for review by the City, and all other required governmental agencies, at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Meetings between the Design Build Entity and the City to review the Construction Document packages, shall be scheduled and held so as not to delay work on the Project.

(d) The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed and approved by a licensed engineer if required by law when submitted to the City for review.

#### 3.14.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

(a) Shop drawings are drawings, submitted to the Design Build Entity by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

(b) The Design Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

(c) Materials and equipment incorporated in the work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

(d) The Design Build Entity shall submit shop drawings approved by the Design Professional of Record and samples of submittals that relate to finish materials and products.

(e) Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in work on the Project as the standard. Any variation in quality must be approved by the City.

### 3.14.3 Field Engineering

(a) If requested by the City, the Design Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.

(b) The Design Build Entity shall locate and protect control points prior to starting work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

### 3.14.4 Geotechnical and Survey

(a) The City may provide the Design Build Entity with a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey that are included in the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the geotechnical report and legal description and project survey.

(b) The Design Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

(c) Any additional tests, borings, etc necessary to support the Construction Documents shall be the responsibility of the Design Build Entity.

## 3.15 MONTHLY REPORT

Upon request by the City, the Design Build Entity shall prepare and submit, during both the Construction Documents Phase and the Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design Build Entity's projected progress for the forthcoming month.

## 3.16 OTHER REPORTS

The Design Build Entity will cooperate with the City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

## 3.17 NOTICES OF LABOR DISPUTE

3.17.1 If the Design Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of work on the

Project, the Design Build Entity shall immediately give written notice including all relevant information to the City.

3.17.2 The Design Build Entity agrees to insert the substance of this Article in any subcontract to which a labor dispute may delay the timely performance of work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Design Build Entity, as the case may be, of all relevant information concerning the Dispute.

### **3.18 GUARANTEE**

3.18.1 The Design Build Entity unconditionally guarantees all work on the Project will be completed in accordance with the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, and other living landscape materials. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design Build Entity shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the City; ordinary wear and tear and abuse excepted. The Design Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for the City's Representative's services and expenses. The Design Build Entity shall perform corrective work on the Project at such times that are acceptable to the City and in such a manner as to avoid, to the extent practicable, disruption to the City's activities.

3.18.2 The Design Build Entity further agrees, within five (5) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the City, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the Design Build Entity shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the City finds that the Design Build Entity fails to perform any of the work under the guarantee, the City may elect to have the work completed at the Design Build Entity's expense and the Design Build Entity will pay costs of the work upon demand. The City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design Build Entity's refusal to pay the above costs.

3.18.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of the City employees,

property, or licensees, the City may undertake, at the Design Build Entity's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the Design Build Entity not being in accordance with the requirements of the Contract Documents

3.18.4 The Design Build Entity's obligations under this Article 3.18 are in addition to and not in limitation to any other obligation of the Design Build Entity under the Contract Documents or at law. Enforcement of the Design Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the City may have under the Contract Documents or at law or in equity for Defective Work.

### **3.19 WARRANTY**

The Design Build Entity warrants to the City that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage caused by improper operation, or normal wear and tear under normal usage under the control of the City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the City to maintain an action for breach of contract against the Design Build Entity.

### **3.20 SCHEDULES REQUIRED OF THE DESIGN BUILD ENTITY**

3.20.1 The Design Build Entity shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities complete the Project within the Contract Time(s). Design Build Entity shall use the Critical Path Method (CPM) in planning, coordinating, performing and reporting on the Work, including all activities of Design Build Entity, Subcontractors, equipment vendors, and suppliers, and in assisting the City in monitoring the progress of the Work.

3.20.2 The Schedule shall depict events and activities, their durations and their interrelationships, and shall recognize the progress that must be made in one task before subsequent tasks can begin. The CPM network shall be comprehensive and shall include all activities, interdependencies and interactions required to perform the Work. Design Build Entity shall submit the construction schedule to the City for review.

3.20.3 All Schedules, including the initial schedule, the baseline schedule, and the monthly updates, shall be submitted to the City in both hard copy and electronic form. The electronic files shall be the actual scheduling program files, not a pdf version of the schedule. Design Build Entity shall submit three hard copies of all Schedules printed in a bar chart format on a timeline, showing the entire construction period.



3.20.4 Within thirty (30) days of execution of the Design Build Contract, the Design Build Entity shall provide the City, for its review and written approval, a detailed Schedule which fully sets forth the Design Build Entity's proposed schedule for completion of all design and construction services on the Project within the Contract Times. The Schedule shall be created in the current version of one of the following scheduling programs: Primavera Project Planner (version P3 or P6), Suretrak Project Manager, or Microsoft Project.

3.20.5 The Schedule shall be updated and submitted to the City on a monthly basis for the purpose of recording and monitoring the actual progress of the Work. Each monthly update shall include actual dates of activities started and/or completed during the previous month, and the percentage of work completed to date on each activity started but not completed. The monthly update shall incorporate all changes mutually agreed upon by the Design Build Entity and the City during preceding periodic reviews and all changes resulting from approved Change Orders and Field Directives. The monthly update shall also include a forecast of the remaining duration for each activity, if the remaining duration is expected to be greater than that calculated by the scheduling program based on the percentage complete.

3.20.6 [RESERVED.]

3.20.7 The Design Build Entity shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. During its work on the Project, the Design Build Entity shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The Design Build Entity shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.20.8 Failure of the City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design Build Entity that the Design Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the Design Build Entity from its sole responsibility to perform and complete the Project within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Price.

### **3.21 AS BUILT DOCUMENTS**

The Design Build Entity shall maintain one (1) set of As-Built drawings and specifications, which shall be kept up to date during the work of the Contract. All changes from the Documents as drawn and written and approved which are incorporated into the work on the Project shall be noted on the As-Built set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project, as well as the actual location of the work, and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each

drawing and the specification cover shall be signed by the Design Build Entity and dated, attesting to the completeness of the information noted therein. As-Built Documents shall be turned over to the City's Representative and shall become part of the Record Documents as required by the Scope of Work.

### **3.22 DOCUMENTS AND SAMPLES AT PROJECT SITE**

The Design Build Entity shall maintain the following at the Project site:

1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
2. One copy of the prevailing wage rates applicable to the Project.
3. The current accepted Contract Schedule.
4. Shop Drawings, Product Data, and Samples.
5. One current copy of all as built documents.
6. All other required submittals.

These shall be available to the City's Representative and shall be delivered to the City's Representative for submittal to the City upon the earlier of Final Completion or termination of the Contract, or at any time upon the City's written demand.

### **3.23 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

#### **3.23.1 Definitions:**

(a) Shop Drawings [above] are drawings, diagrams, schedules, and other data specially prepared for the Project by the Design Build Entity or a Subcontractor to illustrate some portion of the work on the Project.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design Build Entity to illustrate or describe materials or equipment for some portion of work on the Project.

(c) Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the work on the Project will be judged.

3.23.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of work on the Project for which submittals are required, how the Design Build Entity proposes to

conform to the information given and the Design concept expressed in the Contract Documents.

3.23.3 The Design Build Entity shall review, approve, and submit to the City's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the work on the Project or in the activities of the City or of Separate Contractors. Submittals made by the Design Build Entity that are not required by the Contract Documents may be returned without action by the City's Representative.

3.23.4 The Design Build Entity shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by the City's Representative and no exceptions have been taken by the City's Representative. Such work shall be in accordance with approved submittals and the Contract Documents. The City shall provide review and response to all such submittals within ten (10) working days.

3.23.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Design Build Entity represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related work.

3.23.6 If the Design Build Entity discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, the Design Build Entity shall notify the City's Representative and receive instruction before proceeding with the affected work. The Design Build Entity shall be responsible to correct to the satisfaction of the City, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.23.7 The Design Build Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless the Design Build Entity has specifically informed the City's Representative in writing of such deviation at the time of submittal and the City's Representative has given written approval of the specific deviation. The Design Build Entity shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's Representative's review, acceptance, comment, or approval thereof.

3.23.8 The Design Build Entity shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City's Representative on previous submittals.

3.23.9 The City will review first resubmittal of Shop Drawing at its cost. The City reserves the right to reduce the Contract Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

### **3.24 USE OF SITE AND CLEAN UP**

3.24.1 The Design Build Entity shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. The Design Build Entity shall not unreasonably encumber the Project site with materials or equipment.

3.24.2 The Design Build Entity shall, during performance of work on the Project, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the Design Build Entity. The Design Build Entity shall remove all excess dirt, waste material, and rubbish caused by the Design Build Entity; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Project.

3.24.3 Personnel of the Design Build Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

### **3.25 CUTTING, FITTING, AND PATCHING**

3.25.1 The Design Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.25.2 The Design Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design Build Entity shall not cut or alter the work of any Separate Contractor without the prior consent of The City's Representative.

### **3.26 ACCESS TO WORK**

The City, the City's Representative, their consultants, and other persons authorized by the City will at all times have access to the work on the Project wherever it is in preparation or progress. The Design Build Entity shall provide safe and proper facilities for such access and for inspection.

### **3.27 ROYALTIES AND PATENTS**

The Design Build Entity shall pay all royalties and license fees required for the performance of work on the Project. The Design Build Entity shall defend suits or claims resulting from the Design Build Entity's or any Subcontractor's infringement of patent

rights and shall Indemnify the City and the City's Representative from Losses on account thereof.

### **3.28 CONCEALED OR UNKNOWN CONDITIONS**

3.28.1 Except and only to the extent provided otherwise in Article 7 and 8 of the General Conditions, by signing the Contract, the Design Build Entity agrees:

(a) To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in these Contract Documents, and/or that can reasonably be inferred by the Design Build Entity based on its experience and expertise; and

(b) That the Design Build Entity's Contract Price for the Contract was made with full knowledge of this risk.

3.28.2 In agreeing to bear the risk of concealed or unknown conditions, The Design Build Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, concealed and/or unknown conditions shall not excuse The Design Build Entity from its obligation to achieve full completion of the Project within the Contract Time, and shall not entitle the Design Build Entity to an adjustment of the Contract Price.

3.28.3 If concealed or unknown conditions are encountered which require, in the opinion of the City's Representative, design details which differ from those details shown in the Criteria Documents and the City's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if the City agrees with the City's Representative's determinations, the City will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Contract Price and/or Contract Time pursuant to Articles 7 and 8.

3.28.4 If the Design Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design Build Entity shall notify the City's Representative in writing within 24 hours in writing of such conditions so that the City's Representative can determine if such conditions require design details which differ from those design details shown in the Criteria Documents. The Design Build Entity shall be liable to the City for any extra costs incurred as the result of the Design Build Entity's failure to give such notice.

### **3.29 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

Except as otherwise provided in the Contract Documents, the Design Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the City's acceptance of the Project as fully completed.

### **3.30 INDEMNIFICATION**

To the fullest extent permitted by law, the Design-Build Entity shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its governing board and each member thereof, their officers, agents and employees from any and all claims, liabilities, reasonable expenses or damages of any nature, including reasonable attorney's fees, for injury or death of any person, or damage to property, or interference with the use of property arising out of the negligent acts, errors or omission, or willful misconduct by the Design-Build Entity, the Design-Build Entity's agents, officers, employees, sub-consultants, or independent consultants hired by the Design-Build Entity to provide services pursuant to this Contract. The only exception to the Design-Build Entity's responsibility to indemnify, defend and hold harmless the City is where a claim, liability, expense or damage occurs due to the sole negligence, willful misconduct or active negligence of the City. This hold harmless provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Build Entity. Any proposed changes to this indemnification clause must be clearly marked and submitted with the Design-Build Entity's proposal. Failure to provide the proposed changes will preclude the Design-Build Entity, if selected, from negotiating changes with respect to indemnification. Notwithstanding the foregoing, to the extent Design-Build Entity's Scope of Work is subject to Civil Code Sections 2782 and 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Sections 2782 and 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Build Entity.

In claims against any person or entity indemnified under this provision, that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

Joint and several liability shall apply to the Design-Build Entity. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed herein.

## **ARTICLE 4: ADMINISTRATION OF THE CONTRACT**

### **4.1 ADMINISTRATION OF THE CONTRACT BY THE CITY'S REPRESENTATIVE**

4.1.1 The City's Representative will have authority to act on behalf of the City only to the extent provided in the Contract Documents.

4.1.2 The City shall designate in the Contract one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. If the City's Representative(s) changes, the City shall notify the Design Build Entity in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the City may be delegated by the City only by written notice to the Design Build Entity from the City. The Design Build Entity shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design Build Contract. Only directions and decisions made by the City's Representative shall be binding on the City.

4.1.3 During the term of this Design Build Contract, the City's Representative shall have the right to review the Design Professional of Record's work at such intervals as deemed appropriate by the City's Representative. However, no actions taken during such review or site visit by the City's Representative, shall relieve the Design Build Entity of any of its obligations of single point responsibility for the Design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Contract Time.

4.1.4 The City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the Design Build Entity's responsibility.

4.1.5 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and the Design Build Entity shall communicate through the City's Representative. Communications by the Design Build Entity with the City's consultants and the City's Representative's consultants shall be through the City's Representative. Communications by the City and the City's Representative with Subcontractors will be through the Design Build Entity. Communications by the Design Build Entity and Subcontractors with Separate Contractors shall be through the City's Representative. The Design Build Entity shall not rely on oral or other non-written communications.

4.1.6 Based on the City's Representative's Project site visits, review of Design Work, and evaluations of the Design Build Entity's Applications For Payment,

the City's Representative will recommend amounts, if any, due the Design Build Entity and will issue Certificates For Payment in such amounts.

4.1.7 The City's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The City's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the City's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the City or the City's Representative to the Design Build Entity, or any person or entity claiming under, or through, the Design Build Entity.

4.1.8 The City's Representative will have the authority to conduct inspections and to determine Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design Build Entity; and will issue a final Certificate For Payment upon the Design Build Entity's compliance with the requirements of the Contract Documents.

4.1.9 The City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design Build Entity. Should the Design Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether work is within the scope of the Contract Documents; then, before proceeding with the work affected, the Design Build Entity shall notify the City's Representative in writing and request interpretation or clarification. The City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design Build Entity proceed with the work affected before receipt of a response from the City's Representative, any portion of the work on the Project which is not done in accordance with the City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design Build Entity shall be responsible for all resultant losses.

## **4.2 THE DESIGN BUILD ENTITY CHANGE ORDER REQUESTS**

4.2.1 The Design Build Entity may request changes to the Contract Price and/or Contract Time for Extra Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, the City's Representative, their agents or employees, or caused by unforeseen conditions if, and only if, the Design Build Entity follows the procedures specified in this Paragraph 4.2. As used in this Paragraph 4.2, such acts, errors, or omissions shall include, but not be limited to, the



provision of instructions, or interpretations that involve an increase or decrease in Project Scope, Extra Work or delay completion of the Project.

4.2.2 If the Design Build Entity asserts that the Design Build Entity is entitled to an adjustment of the Contract Price and/or Contract Time as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of unforeseen conditions, then the Design Build Entity may submit a Change Order Request in a form acceptable to the City, to the City's Representative.

4.2.3 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Contract Price and/or Contract Time. Upon request of the City's Representative, the Design Build Entity shall submit such additional information as may be requested by the City's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a Cost Proposal meeting the requirements of Article 7 and written documentation demonstrating the Design Build Entity's entitlement to a time extension under Paragraph 8.4. If the Change Order Request seeks an adjustment of the Contract Price for an Excusable delay, upon request of the City's Representative, the Design Build Entity shall submit written documentation demonstrating the Design Build Entity's entitlement to such an adjustment under Subparagraph 7.3.9.

4.2.4 A condition precedent to obtaining an adjustment of the Contract Price and/or Contract Time as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in Subparagraphs 4.2.2 and 4.2.3. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the date the Design Build Entity discovers, or reasonably should discover, that an act, error, or omission of the City, the City's Representative, their agents or employees, has occurred that may entitle the Design Build Entity to an adjustment of the Contract Price and/or Contract Time (even if the Design Build Entity has not been damaged, delayed, or incurred extra cost when the Design Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the Date the Design Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design Build Entity to an adjustment of the Contract Price and/or Contract Time (even if the Design Build Entity has not been damaged, delayed, or incurred extra cost when the Design Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request).

4.2.5 If the City's Representative issues a final decision on all or part of a Change Order Request, the Design Build Entity may contest the decision by filing a timely Claim under the procedures specified in Paragraph 4.3. A final decision is any decision on a Change Order Request which states that it is final.

## 4.3 CLAIMS

4.3.1 All public works claims between the Design-Build Entity and the City shall be resolved pursuant to the procedures set forth in Public Contract Code section 9204. All public works claims of \$375,000 or less which arise between the Design-Build Entity and the City shall be resolved in accordance with Public Contract Code sections 20104 et seq. and other applicable law, unless the City has elected to resolve the dispute pursuant to Public Contract Code section 10240 et seq.

4.3.2 Design-Build Entity shall timely comply with all notices and requests for additional compensation and extensions of time, including but not limited to all requirements of Article 43, as a prerequisite to filing any claim governed by this Article. The failure to timely provide any notice or request required by the Contract Documents shall constitute a waiver of the right to these procedures.

4.3.3 All Claims. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the Design-Build Entity for (1) a time extension, including, without limitation, relief from damages or penalties for delay assessed by the City (2) payment of money or damages arising from work done by or on behalf of the Design-Build Entity and payment of which is not otherwise expressly provided for or the Design-Build Entity is not otherwise entitled, or (3) payment of an amount which is disputed by the City.

4.3.4 All Claims. The Design-Build Entity will submit the claim justification in the following format:

- (a) Summary of claim merit and price, and Contract clause pursuant to which the claim is made
- (b) List of documents relating to claim
  - (i) Specifications
  - (ii) Drawings
  - (iii) Clarifications (Requests for Information)
  - (iv) Schedules
  - (v) Other
- (c) Chronology of events and correspondence
- (d) Analysis of claim merit
- (e) Analysis of claim cost
- (f) Analysis of time impact analysis in CPM format
- (g) Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code sections 12650 et seq.

4.3.5 City Response to Claim. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the claim, or as extended by mutual agreement, shall

provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the City issues its written response.

(a) If the City needs approval from its governing board to provide Design-Build Entity a written statement as set forth above, and the governing board does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, the City shall have up to three (3) days following the next publicly noticed meeting of the governing board after the 45-day period, or extension, expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim.

(b) The City may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the claimant. The City's written response shall be submitted 30 days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

4.3.6 Meet & Confer Conference. If the Design-Build Entity disputes the City's response, or if the City fails to respond within the statutory time period(s), the Design-Build Entity may so notify the City within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, the City shall schedule a meet and confer conference within 30 Days.

4.3.7 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion thereof remains in dispute, the City shall provide the Design-Build Entity with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any portion of the claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with Public Contract Code section 9204, and the City and the Design-Build Entity shall equally share the associated mediator fees. Each party will be responsible for its own attorney's fees and other costs incurred due to the resolution of any Claim.

4.3.8 Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by City, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Design-Build Entity.

4.3.9 Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the City. Such Government Code

claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Design-Build Entity shall be barred from bringing and maintaining a valid lawsuit against the City.

#### **4.4 NO WAIVER**

4.4.1 A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 4, in connection with any Claim shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing such requirements in connection with any other Claims.

4.4.2 The Design Build Entity agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

### **ARTICLE 5: SUBCONTRACTORS**

#### **5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.1.1 All subcontractors shall be retained in compliance with the requirements of the RFP. All subcontractors shall be afforded the applicable protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.), the Design Build Entity shall not, without the written consent of the City: substitute any person or entity as a Subcontractor in place of a Subcontractor designated in the Design Build Entity's original proposal or subsequently awarded a first tier subcontract from the Design Build Entity; permit any such subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Design Build Entity's original or subsequently awarded a first tier subcontract from the Design Build Entity. Any such assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design Build Entity for substitution will be handled through the City's Representative.

5.1.2 The City has the right to request all documentation that supports the Design Build Entity's selection of a Subcontractor. The City shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of work. Within the City's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if the City or the City's Representative

determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

5.1.3 Any increase in the cost of the work on the Project resulting from the replacement or substitution of a Subcontractor or as required by the City or the City's Representative, shall be borne solely by the Design Build Entity. The Design Build Entity shall not be entitled to any increase in Contract Price or an extension of Contract Time due to such replacement or substitution.

5.1.4 The Design Build Entity shall require, in each subcontract for any portion of work on the Project, the Subcontractor to indemnify the City, its Consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Paragraph 3.30.

## **5.2 SUBCONTRACTOR RELATIONS**

5.2.1 Any part of the work on the Project performed for the Design Build Entity by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Design Build Entity by the terms of the Contract Documents, to assume toward the Design Build Entity all the obligations and responsibilities which the Design Build Entity assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Where appropriate, the Design Build Entity shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Design Build Entity shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors. The Design Build Entity shall cause each such subcontract to expressly include the following requirements:

(a) Subcontractor waives all rights that Subcontractor may have against the City for damages caused by fire or other perils covered by builder's risk property insurance carried by Design Build Entity or the City, except for such rights Subcontractor may have to the proceeds of such insurance held by the City under Article 11.

(b) The City and entities and agencies designated by the City will have access to and the right to audit and the right to copy at the City have cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

(c) The Design Build Entity is responsible for reviewing and coordinating the work of and among his subcontractors and the Design Professional of Record. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.2.2 Upon the request of the City, the Design Build Entity shall promptly furnish to the City a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City.

## **ARTICLE 6: CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

### **6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The City reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction or operations at or affecting the Project site, including portions of work on the Project which have been deleted by Change Order. The Design Build Entity shall cooperate with the City's forces and Separate Contractors.

6.1.2 The City will provide coordination of the activities of the City's forces and of each Separate Contractor with the work of the Design Build Entity. The Design Build Entity shall participate with the City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design Build Entity shall make necessary revisions to the Contract Schedule after such joint review.

### **6.2 MUTUAL RESPONSIBILITY**

6.2.1 The Design Build Entity shall afford the City and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Design Build Entity shall connect, schedule, and coordinate its construction and operations with the construction and operations of the City and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the City or Separate Contractors, the Design Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the work on the Project. The Design Build Entity shall promptly report to the City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the City's Representative, the Design Build Entity shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design Build Entity to so report within a reasonable time after discovering such discrepancies or

defects shall constitute an acknowledgment that the other construction or operations by the City or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

## **ARTICLE 7: CHANGES IN THE SCOPE OF WORK**

### **7.1 CHANGES**

7.1.1 The City may, from time to time, order or authorize additions, deletions, and other changes in the Scope of Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to the City.

7.1.2 The Design Build Entity may request a Change Order under the procedures specified in Paragraph 4.2.

7.1.3 A Field Order, as defined below, may be issued by the City, does not require the agreement of the Design Build Entity, and shall be valid with or without the signature of the Design Build Entity.

7.1.4 The Design Build Entity shall proceed promptly with any changes in the Scope of Work, unless otherwise provided in the relevant Change Order, Owner Directed Change Order or Field Order.

### **7.2 DEFINITIONS**

7.2.1 A Change Order becomes a Contract Document when, (i) it is an Owner Directed Change Order as described in Paragraph 7.2.2; or (ii) after it has been signed by both the City and the Design Build Entity, and states their agreement upon all of the following:

- (a) A change in the Scope of Work, if any.
- (b) The amount of an adjustment of the Contract Price, billed as Extra Work pursuant to Attachment 1 to the Contract, if any.
- (c) The amount of an adjustment of the Contract Time, if any.

7.2.2 An Owner Directed Change Order is a type of Change Order which may be issued by the City and incorporated into the Contract Documents without the Design Build Entity's signature, where the City determine that it is in the City's best interest to adjust the Contract Price and/or Contract Time as the City believe necessary, even though no agreement has been reached between the City and the Design Build Entity.

7.2.3 A Field Order is a preliminary to a Change Order that describes a change in the Scope of the Work, the estimated adjustments of the Contract Price and/or the Contract Time, if any, and orders a change in the Scope of Work before all of

the terms of the change are fully agreed upon by the City and the Design Build Entity. A Field Order must eventually be memorialized as a Change Order or an Owner Directed Change Order and incorporated into the Contract Documents.

### **7.3 CHANGE ORDER PROCEDURES**

7.3.1 When requested by the City's Representative, the Design Build Entity shall provide promptly, but in no event longer than seven (7) days from the date of the request, a Cost Proposal setting forth the Design Build Entity's proposed adjustments of the Contract Price and/or the Contract Time, if any, for performing the proposed change in the Scope of Work. Adjustments of the Contract Price resulting from Extra Work and/or deductive work shall be determined using one of the methods described in Article 7. Adjustments of the Contract Time shall be subject to the provisions in Article 8.

7.3.2 The term "Cost of Extra Work" as used in this Article shall mean actual costs incurred by the Design Build Entity and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Design Build Entity demonstrates that they were actually incurred):

(a) Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(b) Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(c) Overtime wages or salaries, specifically authorized in writing by The City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(d) Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(e) Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the City's Representative. Such costs shall be charged at the lowest price available to the Design Build Entity but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the City and the Design Build Entity shall make provisions so that they may be obtained.



(f) Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work.

(g) Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the City's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the generally accepted rental rates for the area in which the work is performed. The Design Build Entity shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

(h) Additional costs of royalties and permits due to the performance of the Extra Work.

(i) Cost for revisions in the Schematic Design Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by the City. Revisions made necessary by adjustments in the City's program or project budget shall be computed at the hourly rates specified in the Exhibits.

(j) The cost for Insurance and Bonds shall not exceed 1% of items (a) – (h) above.

7.3.3 Cost of Extra Work shall not include any of the following: Superintendent(s), Assistant Superintendent(s), Project Engineer(s), Project Manager(s), Scheduler(s), Estimator(s), incidental drafting or detailing, small tools (replacement value does not exceed \$300), office expenses including staff, materials and supplies, on site or off site trailer and storage rental and expenses, site fencing, utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment, data processing personnel and equipment, federal, state, or local business income and franchise taxes, overhead and profit in excess 15% of the cost of the extra work (and of the 15% not more than 10% shall consist of overhead and 5% of profit), costs and expenses of any kind or item not specifically and expressly included in Paragraph 7.3.2, and costs in excess of the hourly rates included in the Design Professional of Record's Rate Schedule.

7.3.4 Compensation for Extra Work as an adjustment to the Contract Price, authorized by Change Order shall be computed as specified in Attachment 2 of the Contract.

7.3.5 As a condition to the Design Build Entity's right to an adjustment of the Contract Price, pursuant to Subparagraph 7.3.4, the Design Build Entity must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the City's Representative on a daily basis.

7.3.6 For work to be deleted by Change Order, the reduction of the Contract Price shall be computed on the basis of one or more of the following:

- (a) Unit prices stated in the Contract or an Attachment thereto.
- (b) Unit prices agreed upon by the City and the Design Build Entity.
- (c) A lump sum agreed upon by the City and the Design Build Entity, based upon the actual costs which would have been incurred in performing the Deleted portions of the work on the Project as calculated in accordance with Subparagraphs 7.3.2 and 7.3.3.

7.3.7 If any one Change Order involves both Extra Work and deleted work in the same portion of the work on the Project, the Contract Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Contract Price will be allowed only on the difference between the two amounts.

7.3.8 The Contract Price will be adjusted for a delay if, and only if, the Design Build Entity demonstrates that all of the following four conditions are met:

- (a) Condition Number One: The delay results in an extension of the Contract Time pursuant to Subparagraph 8.4.1.
- (b) Condition Number Two: The delay is caused solely by one, or more of the following:
  - (i) An error or omission in the Contract Documents caused solely by the City and not as a result of the Design Build Entity's failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or
  - (ii) The City's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the Design Build Entity; or
  - (iii) The City's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the Design Build Entity; or
  - (iv) The failure of the City or the City's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design Build Entity.
- (c) Condition Number Three: The delay is not concurrent with a delay that is:

- (i) Critical under Subparagraph 8.4.1.(b); and
  - (ii) Caused by an event not listed in Subparagraph 7.3.8.
- (b) above.

(d) Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Subparagraph 7.3.8. (b) above.

7.3.9 For each day of delay that meets all four conditions prescribed in Subparagraph 7.3.8 the Contract Price will be adjusted by the rates for Extra Work as included in the Contract. Pursuant to Subparagraph 9.7.4, said rate shall not apply to delays occurring after Substantial Completion.

7.3.10 Except as provided in Articles 7 and 8, the Design Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.11 If for any reason one or more of the conditions prescribed in Subparagraph 7.3.4 is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Contract Time under Subparagraph 7.3.8.

## **7.4 FIELD ORDERS**

7.4.1 A Field Order as described in Subparagraph 7.2.3 above, may be issued by the City. If requested in writing, the Design Build Entity shall promptly provide the City's Representative with a Cost Proposal, setting forth the proposed adjustments of the Contract Price and/or the Contract Time, if any, for performing the change in the Scope of Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Contract Price and the Contract Time, as well as the change in the Scope of Work.

7.4.2 A Field Order signed by the Design Build Entity indicates the agreement of the Design Build Entity therewith, including the Design Build Entity's agreement to the proposed adjustments to the Contract Price and/or the Contract Time stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

7.4.3 Upon receipt of a Field Order, the Design Build Entity shall promptly proceed with the change in the Scope of Work.

7.4.4 If the Design Build Entity does not agree to the adjustment of the Contract Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Subparagraph 7.3.4 above; and the Design Build Entity shall comply with the provisions of Subparagraph 7.3.6 regarding records and documentation of actual costs.

## **7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK**

The City have the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Bid Form/Design Build Entity's proposal. The Design Build Entity shall be required to provide all quantities requested by the City for the prices provided in the proposal as incorporated into the Contract Documents.

## **7.6 NO WAIVER**

7.6.1 A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Subparagraphs 7.3.6, 7.3.8, 7.3.9, 7.3.10, or 7.3.11 in connection with any adjustment of the Contract Price, will not constitute a waiver of, and will not preclude the City, or the City's Representative, from enforcing, such requirements in connection with any other adjustments of the Contract Price.

7.6.2 The Design Build Entity agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Price by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written change order.

## **ARTICLE 8: CONTRACT TIME**

### **8.1 COMMENCEMENT OF WORK ON THE PROJECT**

The date of commencement of the Scope of Work shall be set forth in the Notice(s) To Proceed. The date of commencement shall not be postponed by the failure of the Design Build Entity, Subcontractors, or of persons or firms for whom the Design Build Entity is responsible, to act.

### **8.2 PROGRESS AND COMPLETION**

8.2.1 By signing the Contract:

(a) The Design Build Entity represents to the City that the Contract Time is reasonable for performing the Scope of Work and that the Design Build Entity is able to perform and complete the Scope of Work within the Contract Time.

(b) The Design Build Entity agrees that the City is purchasing the right to have the Design Build Entity present on the Project for the full duration of the time period necessary to complete the Scope of Work described in the RFP.

8.2.2 The Design Build Entity shall not, except by agreement or instruction of the City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Design Build Entity. The date of commencement and the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 The Design Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the Contract Time. If the City's Representative determines and notifies the Design Build Entity that the Design Build Entity's progress is such that the Design Build Entity will not achieve full completion of the work by the Contract Time, the Design Build Entity shall immediately and at no additional cost to the City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from the City's representative, the Design Build Entity shall immediately notify the City's Representative of all measures to be taken to ensure full completion of the work within the Contract Time. The Design Build Entity shall reimburse the City for any extra costs or expenses (including the reasonable value of any services provided by the City's employees) incurred by the City as the result of such measures.

### **8.3 DELAY**

8.3.1 There are only two kinds of delay, Excusable Delay and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Contract Time, and/or the Contract Price and may be compensated as Extra Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 7 and 8, by signing the Contract, the Design Build Entity agrees:

- (a) to bear the risk of Unexcusable Delays to completion of the work on the Project; and
- (b) that the Proposal was made with full knowledge of this risk.

8.3.2 In agreeing to bear the risk of Unexcusable Delays to completion of the work on the Project, the Design Build Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that result in any delay in completion of the Project shall not excuse the Design Build Entity from its obligation to achieve full completion of the Project within the Contract Time, and shall not entitle the Design Build Entity to an adjustment of the Contract Price.

### **8.4 ADJUSTMENT OF THE CONTRACT TIME FOR EXCUSABLE DELAY**

8.4.1 The Contract Time will be extended for an Excusable Delay, if and only if, the Design Build Entity demonstrates that all of the following six conditions are met:

- (a) Condition Number One: When the event causing the delay commences, the Design Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.
- (b) Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the contractually specified date for full

completion of the work on the Project as stated in the Notice to Proceed, or as amended by Change Order. Under this Subparagraph:

(i) If the Contract Schedule shows completion of the entire Project before the contractually specified date for full completion of the Project, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the contractually specified date for full completion of the Project.

(ii) When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to Subparagraph 8.4.2, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

(c) Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Subparagraph 8.4.1. (b). The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the Design Build Entity's failure to timely submit an acceptable Proposed Contract Schedule.

(d) Condition Number Four: Within three (3) days of the date the Design Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design Build Entity has not been delayed when the Design Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design Build Entity submits a timely Change Order Request that meets the requirements of Paragraph 4.2.

(e) Condition Number Five: The delay is not caused by:

(i) A naturally occurring unforeseen site condition not anticipated in the Contract Documents or other written information provided by Owner (e.g., unanticipated naturally occurring rock or sand); or

(ii) The financial inability, misconduct or default of the Design Build Entity, a Subcontractor or supplier; or

(iii) The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design Build Entity; or

(iv) An error or omission in the Contract Documents caused by the Design Build Entity or the Design Build Entity's Design Consultants.

- (f) Condition Number Six: The delay is caused by:
- (i) Fire; or
  - (ii) Strikes, boycotts, or like obstructive actions by employees or labor organizations; or
  - (iii) Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
  - (iv) A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or
  - (v) An error or omission in the Contract Documents caused by the City; or
  - (vi) The City's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of the Design Build Entity; or
  - (vii) The City's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of the Design Build Entity; or
  - (viii) The failure of the City or the City's representative to timely perform any Contract obligation unless such failure is due to the Design Build Entity's default or misconduct.

8.4.2 If and only if a delay meets all six conditions prescribed in Subparagraph 8.4.1, then the Contract Time will be extended by the number of days completion of the entire Project is delayed beyond the Contract Time for completion of the Project.

8.4.3 If for any reason one or more of the six conditions prescribed in Subparagraph 8.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Subparagraph 8.4.2.

## **8.5 COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY**

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Price as the result of Excusable Delays shall be limited to the amounts specified in Article 7.

8.5.2 By signing the Contract, the parties agree that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

(a) To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:

(i) Changes to correct errors or omissions caused by the City, if any, in the Contract Documents.

(ii) Changes resulting from the City's decision to change the Scope of the Work subsequent to execution of the Contract.

(iii) Changes due to unforeseen conditions.

(b) To suspend work on the Project or any part thereof.

(c) To delay work on the Project, including without limitation, delays resulting from the failure of the City or the City's Representative to timely perform any Contract obligation and delays for The City's convenience.

## **8.6 NO WAIVER**

A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Paragraph 8.4, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing, such requirements in connection with any present or future delays.

The Design Build Entity agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

## **ARTICLE 9: PAYMENTS AND COMPLETION**

### **9.1 COST BREAKDOWN/SCHEDULE OF VALUES**

Within ten (10) days after commencement of each phase of the Scope of Work, the Design Build Entity shall submit to the City's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Contract Price applicable to that phase of the work in a form reasonably approvable to the City. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Contract Price. The Cost Breakdown, when approved by the City's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the Design Build Entity's Applications for Payment.



## **9.2 PROGRESS PAYMENT**

9.2.1 The City agrees to pay monthly to the Design Build Entity, subject to Subparagraph 9.4.2, an amount equal to 95% of the sum of the following:

(a) Cost of the Construction Work in permanent place as of the end of the preceding month.

(b) Cost of materials not yet incorporated in the Construction Work, subject to Subparagraph 9.3.5.

(c) Less amounts previously paid.

(d) During the Design Work, the City shall pay the Design Build Entity monthly a uniform amount prorated, based on the Contract Time and Contract Price associated with either Schematic Design or Construction Documents Phase.

9.2.2 At any time after 50% of the work on the Project has been completed, if the City find that satisfactory progress of the work on the Project is being made, the City may, at its sole discretion, make any of the remaining progress payments in full.

## **9.3 APPLICATION FOR PAYMENT**

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, the Design Build Entity shall submit to the City's Representative an itemized Application For Payment, for the cost of the work in permanent place, as approved by the City's Representative, which has been completed in accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The Application For Payment shall be prepared as follows:

(a) In a form approved by the City.

(b) Itemized in accordance with the Cost Breakdown as applicable.

(c) Include such data substantiating the Design Build Entity's right to payment as the City's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Paragraph 9.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.

(d) Itemized retention.

9.3.2 Applications for Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2)

amounts the Design Build Entity does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by the City, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and (2) unconditional waivers and releases of claims and stop notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4 The Design Build Entity warrants that, upon submittal of an Application For Payment, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the City, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of the Design Build Entity, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

9.3.5 At the sole discretion of the City, the City's Representative may approve for inclusion in the Application for Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to the City's Representative. In such case, the Design Build Entity shall furnish evidence satisfactory to the City's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of the Design Build Entity. Only materials to be incorporated in the work on the Project will be considered for payment. The City may require as a condition of payment for any stored materials that the Design Build Entity execute a Security Agreement and UCC-1. Any payment shall not be construed as acceptance of such materials nor relieve the Design Build Entity from sole responsibility for the care and protection of such materials; nor relieve the Design Build Entity from risk of loss to such materials from any cause whatsoever; nor relieve the Design Build Entity from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the City to require fulfillment of all terms of the Contract.

#### **9.4 APPROVAL OF CERTIFICATE FOR PAYMENT BY CITY**

9.4.1 If the Design Build Entity has made Application for Payment in accordance with Paragraph 9.3, the City's Representative shall, not later than 30 days after the Date of receipt of an undisputed Application for Payment, review and approve the Application for Payment for such amount as the City's Representative determines to be properly due.

9.4.2 The City may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the City if, in the City's opinion, the representations to the City required of the Design Build Entity pursuant to the Contract Documents cannot be made. Failure by the City to deduct any sums from a progress

payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which the Design Build Entity is liable under the contract. For instance, the City may withhold payment, in whole or in part, to such extent as may be necessary to protect the City from loss because of:

- (a) Failure to provide requested supporting documents;
- (b) Defective work not timely remedied;
- (c) Stop Notices. If any Stop Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the City shall retain from payments otherwise due the Design Build Entity, in addition to other amounts properly withheld under this paragraph or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Notice; provided, however, that the City may release such funds upon receipt of evidence satisfactory to the City to the effect that the Design Build Entity has resolved such claim, by settlement, Stop Notice Bond or otherwise. All other provisions of state law with respect to stop notices shall also apply;
- (d) Liquidated damages assessed against the Design Build Entity;
- (e) Reasonable doubt that the work on the Project can be completed for the unpaid balance of any Contract Price or within the Contract Time;
- (f) Damage to the City, another the Design Build Entity, or subcontractor, including any sums expended by or on behalf of the City in performing any of the Design Build Entity's obligations under the Contract which the Design Build Entity has failed to perform or has performed inadequately;
- (g) Unsatisfactory prosecution of the work by the Design Build Entity;
- (h) Failure to store and properly secure materials;
- (i) Failure of the Design Build Entity to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- (j) Failure of the Design Build Entity to maintain record drawings;

(k) Erroneous estimates by the Design Build Entity of the value of the work on the Project performed, or other false statements in an Application for Payment;

(l) Unauthorized deviations from the Contract Documents;

(m) Failure of the Design Build Entity to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

(n) Forfeiture of funds pursuant to California Labor Code Section 1727. The City shall retain and transfer those funds pursuant to California Labor Code Section 1730.

9.4.3 Subject to the withholding provisions of Subparagraph 9.4.2, the City will pay the Design Build Entity the amount set forth in the Application for Payment no later than 15 days after the approval of the Application for Payment by the City's Representative as described in paragraph 9.4.1 above.

9.4.4 Neither the City nor the City's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.5 Neither an approved Application for Payment nor a progress payment made by the City will constitute acceptance of Defective Work.

## **9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW**

9.5.1 At the request and expense of the Design Build Entity, a substitution of securities may be made for any monies retained by the City under Paragraph 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by the Design Build Entity with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow Contract referred to in Subparagraph 9.5.3 until final payment is due in accordance with Paragraph 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The Design Build Entity shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Subparagraph 9.5.1, and at the request and expense of the Design Build Entity, the City will deposit retention directly with Escrow Agent. The Design Build Entity may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the Design Build Entity.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the Design Build Entity, the City, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form contained in the Exhibits. The terms of such escrow Contract are incorporated into the requirements of this Paragraph 9.5.

**9.6 [RESERVED.]**

**9.7 [RESERVED.]**

**9.8 FINAL COMPLETION AND FINAL PAYMENT**

9.8.1 Upon receipt of notice from the Design Build Entity that the work on the Project is ready for final inspection, the City's Representative will make such inspection. Final Completion shall be when the City's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. The City will file a Notice of Completion within 5 days after Acceptance by the City Council. After receipt of the final Application for Payment, if the City's Representative determines that Final Completion has occurred, the City's Representative will issue the final Certificate for Payment.

9.8.2 Neither final payment nor any retention shall become due until the Design Build Entity submits the following items to the City's Representative:

(a) The final Application for Payment and all submittals required in accordance with Paragraph 9.3.

(b) All guarantees and warranties procured by the Design Build Entity from Subcontractors, all operating manuals for equipment installed in the Project, As built documents, and all other submittals required by the Contract Documents.

(c) The final payment shall be made, subject to the satisfaction of all other legal conditions to final payment, 35 days after the filing of the Notice of Completion.

9.8.3 Acceptance of final payment by the Design Build Entity shall constitute a waiver of all claims, except those previously made in writing and identified by the Design Build Entity as unsettled at the time of the final Application For Payment, and Design Build Entity shall submit a waiver of all such claims, in a form reasonably acceptable to the City, at the time of final payment.

**ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Design Build Entity shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

## **10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The Design Build Entity shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

(a) Employees involved in the Construction Work and other persons who may be affected thereby.

(b) The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of the Design Build Entity or Subcontractors.

(c) Other property at the Project site and adjoining property.

10.2.2 The Design Build Entity shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, the Design Build Entity shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 The Design Build Entity shall designate a responsible member of the Design Build Entity's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by the Design Build Entity in writing to the City and the City's Representative.

10.2.5 The Design Build Entity shall not load or permit any part of the Construction Work or the Project site to be loaded so as to endanger the safety of persons or property.

## **10.3 EMERGENCIES**

In an emergency affecting the safety of persons or property, the Design Build Entity shall act to prevent or minimize damage, injury, or loss. The Design Build Entity shall promptly notify the City's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the Design Build Entity's action.

## **ARTICLE 11: INSURANCE**

### **11.1 THE DESIGN BUILD ENTITY'S INSURANCE**

11.1.1 .The Design Build Entity shall obtain, and at all times during the performance of this Contract, maintain the following insurance. Evidence of coverage shall be provided prior to the start of work:

(a) Minimum Scope of Insurance.

(i) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Commercial General Liability Insurance must include coverage for the following:

- i) Bodily Injury and Property Damage
- ii) Personal Injury/Advertising Injury
- iii) Premises/Operations Liability
- iv) Products/Completed Operations Liability
- v) Aggregate Limits that Apply per Project
- vi) Explosion, Collapse and Underground (UCX) exclusion deleted
- vii) Contractual Liability with respect to this Agreement
- viii) Broad Form Property Damage
- ix) Independent Consultants Coverage

(ii) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Policy shall be maintained during the performance of the work under this agreements and for twelve (12) months following completion for all work

(iii) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Such insurance shall include and insurer's Waiver of Subrogation in favor of the City and will be in a form and with insurance companies acceptable to the City. Policy shall be maintained during the performance of the work under this agreement and for twelve (12) months following completion for all work.

(iv) Professional Liability: Professional Liability Insurance insuring the that Design Build Entity and all other persons for whose acts the Design Build Entity may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional architectural or engineering responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to the City by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the Design Build Entity's services hereunder.

(b) Minimum Limits of Insurance.

(i) General Liability: General Liability will be provided in the following \$2,000,000 per occurrence / \$4,000,000 aggregate for bodily injury, personal injury and property damage, as well as an excess Umbrella Liability policy in the amount of \$2,000,000 covering the above named perils. In either case, if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

(iv) Professional Liability Insurance: \$2,000,000 per claim and in the aggregate.

(v) All Coverages: Each insurance policy required by this RFP shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(c) Verification of Coverage. The Design Build Entity shall provide to City certificates of insurance and endorsements effecting coverage required by this Contract. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the City. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of City or any named insured shall not be called upon to contribute to any loss. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached, naming the City, its elected officials, officers, employees, and agents as additional insureds, and in a form acceptable to the City. All certificates and endorsements must be received and approved by the City within five (5) calendar days of the date of the Letter of Award. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(d) Subcontractor Insurance Requirements. The Design Build Entity shall require each all Subcontractors and Subconsultant to meet the requirements of this insurance section before commencing work except that the Design Build Entity shall determine the appropriate dollar amount of coverage required based on the scope



of the work to be performed by the Subcontractor. In addition, the Design Build Entity shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(e) Builder's Risk "All-Risk" Insurance. The Design Build Entity, during the progress of the Project and until Final Acceptance of the Project by the City upon completion of the Project, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the Project, and including work completed and work in progress to the full insurable value thereof. The Design Build Entity's Builders Risk "All-Risk" Insurance shall include coverage and insurance against the perils of earthquakes. Such insurance shall include the City as an additional named insured, and any other person with an insurable interest designated by the City as an additional named insured. The risk of damage to the Project due to the perils covered by the Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Project, is that of the Design Build Entity and the surety, and no claims for such loss or damage shall be recognized by the City, nor will such loss or damage excuse the complete and satisfactory performance of the Project by the Design Build Entity.

(f) Other Insurance. The Design Build Entity shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

## **ARTICLE 12: UNCOVERING AND CORRECTION OF CONSTRUCTION WORK**

### **12.1 UNCOVERING OF WORK ON THE PROJECT**

12.1.1 If a portion of the Construction Work is covered contrary to the City's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the City's Representative, be uncovered for the City's Representative's observation and be replaced at the Design Build Entity's expense without adjustment of the Contract Time or the Contract Price.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City's Representative has not specifically requested to observe prior to its being covered, the City's Representative may request to see such Construction Work and it shall be uncovered and replaced by the Design Build Entity. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Construction Work is not in accordance with the Contract

Documents, the Design Build Entity shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Price.

## **12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD**

The term "Guarantee To Repair Period" means a period of one (1) year as described in Article 3.18 above, unless a longer period of time is specified elsewhere in the Contract Documents, commencing as follows:

1. For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the Date of Substantial Completion.

2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Paragraph 9.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

3. For all Construction Work other than (1) or (2) above, from the Date of Final Completion.

Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of the Design Build Entity under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of the Design Build Entity to correct the work on the Project and in no way limits either the Design Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design Build Entity's obligations under the Contract Documents.

## **ARTICLE 13: TERMINATION OR SUSPENSION OF THE CONTRACT**

### **13.1 TERMINATION BY THE CITY FOR CAUSE**

13.1.1 The City will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

(a) The Design Build Entity becomes insolvent or files for relief under the bankruptcy laws of the United States.

(b) The Design Build Entity makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

(c) A receiver is appointed to take charge of the Design Build Entity's property.

(d) The commencement or completion of any work activity is 14 days or more behind the Date set forth in the Contract Schedule for such work activity, and which results in an Unexcusable Delay.

- (e) The Design Build Entity abandons work on the Project.

13.1.2 Upon the occurrence of any of the following events, the City will have the right to terminate the Contract for cause if the Design Build Entity fails to promptly commence to cure such default and diligently prosecute such cure within five (5) days after notice from the City, or within such longer period of time as is reasonably necessary to complete such cure:

- (a) The Design Build Entity persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work on the Project in accordance with the Contract Documents.

- (b) The Design Build Entity fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the City.

- (c) The Design Build Entity disregards Applicable Code Requirements.

- (d) The Design Build Entity persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

- (e) The Design Build Entity is in default of any other material obligation under the Contract Documents.

- (f) The Design Build Entity persistently or materially fails to comply with applicable safety requirements.

13.1.3 Upon any of the occurrences referred to in Subparagraphs 13.2.1 and 13.2.2, the City may, at its election and by notice to the Design Build Entity, terminate the Contract and/or the Design Build Entity's right to perform work on the Project, and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the Design Build Entity; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the City may deem expedient. If requested by the City, the Design Build Entity shall remove any part or all of the Design Build Entity's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request; and if the Design Build Entity fails to do so, the City may remove or store, and after ninety (90) days sell, any of the same at the Design Build Entity's expense.

13.1.4 If the Contract is terminated by the City as provided in this Paragraph 13.2, the Design Build Entity shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all work on the Project by the City.

13.1.5 If the unpaid balance of the Contract Price exceeds the cost of completing the Project, including all additional costs and expenses made necessary

thereby, including costs for the City staff time, plus all Losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to the Design Build Entity. If such costs, expenses, Losses, and liquidated damages exceed the unpaid balance of the Contract Price, the Design Build Entity shall pay such excess to the City.

13.1.6 No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents upon such termination; and the City may proceed against the Design Build Entity to recover all Losses suffered by the City.

## **13.2 SUSPENSION BY THE CITY FOR CONVENIENCE**

13.2.1 The City may, at any time and from time to time, without cause, order the Design Build Entity, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the City may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Paragraph 13.3. The work on the Project may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, the Design Build Entity shall, at the City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the Design Build Entity and the City, the City shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

13.2.2 If a Suspension Order is canceled or expires, the Design Build Entity shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Contract Price or the Contract Time necessarily caused by such suspension. Any Claim by the Design Build Entity for an adjustment of the Contract Price or the Contract Time shall be made within twenty-one (21) days after the end of the work suspension. The Design Build Entity agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.2.3 The provisions of this Paragraph 13.3 shall not apply if a Suspension Order is not issued by the City. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

## **13.3 TERMINATION BY THE CITY FOR CONVENIENCE**

13.3.1 The City may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the Design Build Entity. Upon such termination, the Design Build Entity agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the

Design Build Entity, the City shall pay the Design Build Entity in accordance with Subparagraph 13.4.4.

13.3.2 Upon receipt of notice of termination under this Paragraph 13.4, the Design Build Entity shall, unless the notice directs otherwise, do the following:

(a) Immediately discontinue the work on the Project to the extent specified in the notice.

(b) Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

(c) Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

(d) Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.3.3 Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the Design Build Entity's obligations under Subparagraph 13.4.2, as to bona fide obligations assumed by the Design Build Entity prior to the Date of termination.

13.3.4 Upon such termination, the City shall pay to the Design Build Entity the sum of the following:

(a) The amount of the Contract Price allocable to the portion of the work on the Project properly performed by the Design Build Entity as of the Date of termination, less sums previously paid to the Design Build Entity.

(b) Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the work on the Project.

(c) Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

(d) Plus reasonable demobilization costs.

(e) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

13.3.5 The above payment shall be the sole and exclusive remedy to which the Design Build Entity is entitled in the event of termination of the Contract by

the City pursuant to Paragraph 13.4; and the Design Build Entity will be entitled to no other compensation or damages and expressly waives same.

13.3.6 The Design Build Entity shall provide the City a written payment application for the termination costs within sixty (60) days of the effective date of termination. The application shall itemize the costs as set forth in paragraph 13.4.4, above, and shall be supported by such documentation as the City may reasonably request.

## **ARTICLE 14: STATUTORY REQUIREMENTS**

### **14.1 NONDISCRIMINATION/EQUAL OPPORTUNITY EMPLOYMENT**

Design Build Entity represents that it is an equal opportunity employer and the Design Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other classification protected by federal or state law. Such nondiscrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Design Build Entity and its Subcontractors shall also comply with all relevant provisions of the City's minority business enterprise program, affirmative action program, or other related programs or guidelines currently in effect or hereinafter enacted.

### **14.2 HOURS OF WORK**

14.2.1 The Design Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Contract Time.

14.2.2 work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the City. Regular working hours shall be 7:00 a.m. to 3:30 p.m. and shall not be changed except with consent of the City.

14.2.3 As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Design Build Entity or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Design Build Entity in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

(a) The Design Build Entity shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Design Build Entity, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Design Build Entity is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

(b) If the work done after hours is required by the Contract to be done outside the Design Build Entity's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the City.

(c) If the City allows the Design Build Entity to do work outside regular working hours for the Design Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design Build Entity by the City and deducted from the next Progress Payment.

(d) If the Design Build Entity elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design Build Entity by the City and deducted from the next Progress Payment.

(e) No work on the Project or other activities by or on behalf of the Design Build Entity which presents a hazard or unreasonable disruption to the public safety or health shall be allowed. The determination as to whether work on the Project or some other activity presents a hazard or constitutes such a danger to public health or safety shall be made by and pursuant to the sole discretion of the City. All work on the Project or other activities which could present such a hazard shall be performed at a time when the hazard can be avoided as designated by the City. Neither the Design Build Entity nor its subcontractors or anyone working on behalf of the Design Build Entity or subcontractors shall be entitled to additional compensation or Contract Time for having to arrange their work schedule so as not to violate the provisions of this Section. The Design Build Entity, subcontractors and persons working on behalf of the Design Build Entity and subcontractors shall be expected to arrange such work and other activities in advance so as to avoid creating monetary or time impacts.

### **14.3 WAGE RATES, TRAVEL, AND SUBSISTENCE**

14.3.1 The Design Build Entity is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and

since the total compensation is \$1,000 or more, the Design Build Entity agrees to fully comply with such Prevailing Wage Laws. The Design Build Entity shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the Design Build Entity may view a copy of the prevailing rates of per diem wages at the City's offices. The Design Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Design Build Entity's principal place of business and at the Project site. The Design Build Entity shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

14.3.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

14.3.3 The Design Build Entity shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design Build Entity or any Subcontractor and such workers.

14.3.4 The Design Build Entity shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

14.3.5 If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

14.3.6 Pursuant to Labor Code § 1775, the Design Build Entity shall as a penalty to the City, forfeit up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the Design Build Entity or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the Design Build Entity's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage, the previous record of the Design Build Entity in meeting his or her prevailing rate of per diem wage obligations, or the Design Build Entity's willful failure to pay the correct



prevailing rate of per diem wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if the Design Build Entity had knowledge of it or the obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Design Build Entity.

14.3.7 Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work on the Project to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

14.3.8 Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

14.3.9 The Design Build Entity shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

14.3.10 The Design Build Entity shall include provisions in this Article in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to the City.

14.3.11 The Design Build Entity, or any subcontractor working under the Design Build Entity may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Design Build Entity and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Design Build Entity on the project shall be returned to the City. The Design Build Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

14.3.12 The Design Build Entity shall maintain accurate payroll records during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project. Contractors and subcontractors must also ensure that all laborers and mechanics on the project are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency.

(a) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

(b) The records shall be made available for inspection and furnished upon request to the employee or his or her representative, DIR, the City, or the public, upon request.

(c) In the event of noncompliance with the requirements of this section, the Design Build Entity shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Design Build Entity shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

#### **14.4 PUBLIC WORKS CONTRACTOR REGISTRATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the DIR at the time of the bid. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

#### **14.5 APPRENTICES**

The Design Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design Build Entity or any subcontractor. The Design Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Knowing violations of Labor Code Section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code Section 1777.7. The responsibility for compliance with this Article shall rest upon the Design-Build Entity.

#### **14.6 THIRD-PARTY CLAIMS (PUB. CONTRACT CODE § 9201.)**

The City will provide the Design Build Entity with timely notice of any third party claim relating to the Contract for the Project. The City also retains full authority to compromise or otherwise settle any claim related to the Contract for the Project.

#### **14.7 ANTI-TRUST CLAIM ASSIGNMENT (PUB. CONTRACT CODE §7103.5.)**

The City must provide the Design Build Entity with timely notification of the receipt of any third-party claim, relating to the Contract and the City is entitled to recover its reasonable costs incurred in providing such notification.

At final payment, contractor or subcontractor must agree to assign awarding party all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

#### **14.8 STORMWATER POLLUTION PREVENTION PLAN**

14.8.1 The Design Build Entity shall be required to comply with all aspects of the State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development. The Design Build Entity shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Design Build Entity shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. In bidding on this Contract, it shall be the Design Build Entity's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Design Build Entity shall comply with all requirements of the State Water Resources Control Board. The Design Build Entity shall include all costs of compliance with specified requirements in the Contract Price.

14.8.2 The Design Build Entity shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The Design Build Entity shall provide copies of all reports and monitoring information to the Agency's Representative. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the Agency.

14.8.3 The Agency retains the right to procure and maintain coverage under the Permit for the Project site if the Design Build Entity fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to the Agency. Any costs

incurred by the Agency in procuring and maintaining coverage under the Permit, or drafting an NOI or SWPPP in the event that Design Build Entity is unwilling or unable to maintain compliance or draft a satisfactory permit related documents, shall be paid by the Design Build Entity.

14.8.4 Design Build Entity shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Design Build Entity shall provide copies of all reports and monitoring information to the Agency Representative. If the Design Build Entity has failed or is unable to maintain compliance with the Permit, the Agency reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Design Build Entity has adequately maintained compliance with the Permit shall be the Agency's sole determination. In the event that Design Build Entity has failed or is unable to maintain compliance with the Permit, any costs incurred by the Agency in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

14.8.5 In entering into this Contract, it shall be Design Build Entity's responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to the Agency, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.

14.8.6 In addition to compliance with the Permit, Design Build Entity shall comply with the lawful requirements of any applicable municipality, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

14.8.7 Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. The Design Build Entity, by executing this Contract, hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

14.8.8 Failure to comply with the Permit is in violation of federal and state law. The Design Build Entity hereby agrees to indemnify and hold harmless the Agency, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which Agency, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of the Agency, its Board members, officers, agents, employees or authorized volunteers. The Agency may seek damages from the Design Build Entity for delay in completing the Contract in accordance with the Contract Documents, caused by the Design Build Entity's failure to comply with Permit.

## **14.9 CONTRACTORS STATE LICENSE BOARD NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

## **ARTICLE 15: MISCELLANEOUS PROVISIONS**

### **15.1 GOVERNING LAW**

This Contract shall be governed by the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

### **15.2 SUCCESSORS AND ASSIGNS**

The City and the Design Build Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

### **15.3 RIGHTS AND REMEDIES**

15.3.1 All the City's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by the City or the City's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the City or the City's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the City's Representative, or the Design Build Entity.

#### **15.4 SURVIVAL**

The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the City's right to audit the Design Build Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

#### **15.5 COMPLETE CONTRACT**

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided herein.

#### **15.6 SEVERABILITY OF PROVISIONS**

If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **15.7 THE CITY'S RIGHT TO AUDIT**

The City and entities and agencies designated by the City will have access to and the right to audit and the right to copy at the City's cost all of the Design Build Entity's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Design Build Entity shall preserve all such records and other items for a period of at least four (4) years after Final Completion.

Further, in accordance with Government Code Section 8546.7, records of both the City and the Design Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

#### **15.8 NOTICES**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Contract unless another address is designated in writing. Notice shall be effective upon receipt or three (3) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile or electronic mail shall not be effective unless acknowledged in writing by the receiving party.

## **15.9 TIME OF THE ESSENCE**

Time limits stated in the Contract Documents are of the essence of the Contract.

## **15.10 STATUTORY LIMITATION**

Commencement of statutory limitation periods and statute of repose shall be as provided by California law.

## **15.11 CORRECTION OF ERRORS AND OMISSIONS**

The Design Build Entity agrees to correct any error or omission in the Construction Documents at no additional cost to the City.

## **15.12 INTERPRETATION**

This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.

## **15.13 DRUG-FREE WORKPLACE**

It is the policy of the City of Santee to maintain a drug-free workplace. The unlawful manufacture, distribution, dispensation, possession and/or use of controlled substances in the workplace are prohibited. Controlled substances are those defined in 21 USC Section 812 and include, but are not limited to, such substances as marijuana, heroin, cocaine and amphetamines. The workplace is presumed to include all City of Santee facilities and premises where City of Santee employees may visit in the execution of their job duties such as homes, schools, hospitals, etc. All City of Santee employees are required to comply with this policy as an essential condition of employment. Individuals who are not considered City of Santee employees, but who perform work at City worksites for the City's benefit are required to comply with this policy. Such individuals who unlawfully manufacture, distribute, dispense, possess or use controlled substances in the City workplace may be barred from further work for and in the City's facilities as well as from future consideration.